



Community Development Department

DATE: March 26, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: HOME Rights and Responsibilities

REQUEST:

Consider the request of the North Dakota Housing Finance Agency (NDHFA) to assign all of the City of Bismarck's rights and responsibilities related to the 2017 HOME funds provided for the Washington Court project to North Dakota Housing Finance Agency (NDHFA).

BACKGROUND INFORMATION:

In 2019, the City of Bismarck awarded 2017 HOME funds in the amount of \$524,350 for the renovation of units at Washington Court, owned by Burleigh County Housing Authority (BCHA). Additional 2017 funds in the amount of \$245,000 were awarded in 2020.

Similar requests have been approved recently by the Board of City Commissioners for the reassignment of HOME and NSP rights and responsibilities to NDHFA for their Boulevard Apartments project. The North Dakota Housing Finance Agency is now requesting that the City of Bismarck assign all of its rights and responsibilities in this project to NDHFA. NDHFA is currently monitoring the project because other funding sources from NDHFA are included in the project. Since they are already monitoring the project for the other programs, NDHFA believes monitoring the project for compliance with HOME requirements would streamline the process.

RECOMMENDED CITY COMMISSION ACTION:

Approve the request to assign the City of Bismarck's rights and responsibilities related to the 2017 HOME funds for the Washington Court apartments project to the North Dakota Housing Finance Agency. This action would include the amendment and execution of documents that would transfer the City's rights under the Mortgage, Amended Mortgage, Assignment of Rents and Leases, Promissory Note, Amended Promissory Note, Loan Agreement and Declarations of Land Use Restrictive Covenants that was executed and recorded in December 2020.

STAFF CONTACT INFORMATION:

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ATTACHMENTS:

1. Washington Court HOME Assignment

ASSIGNMENT

This Assignment (the "Assignment") is dated as of ____ day of _____, 2024 and is entered into by and between the City of Bismarck, ("Assignor") and the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency, ("Assignee").

Whereas, Washington Court, LLC a North Dakota limited liability limited partnership ("Borrower") entered into the Promissory Note dated January 12, 2018 ("Note"), an Assignment of Rents and Leases dated January 12, 2018 ("Assignment"), which was amended on December 23, 2020, and entered into a Mortgage- One Hundred Eighty Day Redemption, Security Agreement and Fixture Filing dated January 12, 2018, recorded with the Burleigh County Recorder on December 11, 2020, as Document Number 914573 ("Mortgage"), securing the Note, with Assignor, evidencing a HOME project loan/affordable housing project, and entered into an Amended Mortgage- One Hundred Eighty Day Redemption, Security Agreement and Fixture Filing dated December 23, 2020, recorded with the Burleigh County Recorder on December 23, 2020, as Document Number 915401 ("Amended Mortgage"); and

Whereas, as a condition of the Note and Mortgage and the receipt of HOME funds, the Borrower and Assignor agreed to a Home Loan Agreement ("Loan Agreement"), dated January 22, 2018, and Amended Declaration of Land Use Restrictive Covenants ("Covenants") to apply to the project. Said Covenants were dated December 23, 2020, and recorded with the Burleigh County Recorder on December 23, 2020 as Document Number 915403; and

Whereas, as a condition of the receipt of HOME Program funds, the North Dakota Department of Commerce, Division of Community Services ("DCS") and the Assignor entered into a Recipient Agreement, dated August 7, 2003, regarding the provision of HOME Program funds for this project; and

Whereas the Assignor has requested to assign the Note and Mortgage and the Assignee has agreed to assume the Note and Mortgage and to abide by all of the provisions of the Covenants, the Development Agreement and any other applicable requirements and or

regulations and to bring payments current upon the approval of the Assignment by the Borrower, and the Assignee has agreed to the undertaking by the Assignee of all the rights and obligations of the Assignor as contained in the Note and Mortgage; and

Now, therefore, in consideration of the premises and the mutual covenants herein contained and good and valuable consideration, the parties agree as follows:

1. **Assignment**. Subject to and in accordance with the terms and conditions of the Note and Mortgage, and for an agreed consideration, the Assignor hereby irrevocably sells, transfers and assigns to the Assignee, and Assignee hereby irrevocably purchases, accepts and assumes from the Assignor, all of the Assignor's rights and obligations under the Note and Mortgage. Such sale and assignment is without recourse and, except as expressly provided in this Assignment or written collateral agreement, without representation or warranty by Assignor. By acceptance of this Assignment, the Assignee agrees that the project will conform to the Covenants and that the Assignee will fulfill the terms of the recipient Agreement.

2. **Severability**. If any term or provision of this Assignment or the application therefore to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the full extent permitted by law.

Signature page(s) follow.

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